IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 640 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHRENIKBHAI SURENDRABHAI SHAH - Applicant(s)
Versus
KEYURBHAI PRAVINCHANDRA SHAH & 4 - Respondent(s)

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Appearance :

MR BB NAIK for Applicant(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR IH SYED for Respondent(s) : 1 - 2.
MR MITESH L RANGRAS for Respondent(s) : 3,
MS DHARMISHTA RAVAL for Respondent(s) : 4,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/08/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226

and 227 of the Constitution of India, the petitioner – original complainant/ accused has prayed for an appropriate order to quash and set aside the impugned order dated 1st September, 2005 passed by the learned Metropolitan Magistrate, Court No. 16, Ahmedabad staying the proceedings of Criminal Case No. 142 of 2004 filed by the petitioner under Section 210 of the Criminal Procedure Code (“***Cr.P.C.***” for short). It is further prayed to issue appropriate directions to the learned Metropolitan Magistrate, Court No.16, Ahmedabad to proceed with Criminal Case No. 142 of 2004, filed by the petitioner.

2. The petitioner has filed Criminal Case No.142 of 2004 against respondent Nos. 1 to 4 herein for the offences punishable under Sections 406, 408, 409 read with Section 34 of the Indian Penal Code (“***IPC***” for short). It is the case on behalf of the petitioner that he is Engineer and he has acquired considerable experience in the business of manufacture and sale of chemicals due to his family business. That respondent No.1 – Keyurbhai Pravinchadra Shah, who is son of Pravinchandra Nathalal Shah, was a Director of Madhavpura

Mercantile Cooperative Bank Limited (“***MMC Bank***” for short) during the year 1997 to 1999, approached the petitioner in the year 1997 with a request to help him in purchasing one factory put to auction at Ankleshwar. Said Keyurbhai was also in the business of chemicals, the petitioner was knowing him as a businessman in the said business. It is the case on behalf of the petitioner that initially he was not inclined to join hands with said Keyurbhai as he was very busy with his family business of manufacturing and selling chemicals, that after persuasion by said Keyurbhai and on assurance given by him that the petitioner has to give guidance in the production and sale of chemical which might be manufactured in the factory which was to be purchased in the auction, the petitioner agreed to the said proposal. It is submitted that they participated in the auction and purchased the Unit at Ankleshwar for Rs.60 lacs and the said Chemical Factory was started in the name and style of ***Shree Siddhi Intermediates Private Limited*** (“***the Company***” for short) by forming and constituting a private limited Company, wherein Keyurbhai Shah was the Managing Director and the petitioner was a

Director. It is case on behalf of the petitioner that Registered Office of said Company was situated at Ahmedabad and its transactions were with Khadia Branch of the MMC Bank, as the father of Keyurbhai Shah was a Director of the MMC Bank. It is the case on behalf of the petitioner that the petitioner was only giving advice regarding the line of production and sales to Keyurbhai Shah and said Keyurbhai Shah was managing entire affairs of the Company and even the account of the Company with the MMC Bank was operated by said Keyurbhai Shah alone and he was signing all the documents and cheques in the transactions with the MMC Bank. It is the case on behalf of the petitioner that after purchase of the factory at Ankleshwar and after constituting the Private Limited Company, an application came to be submitted to the MMC Bank on 08.06.1998 for loan of Rs.50 lacs and the said Bank sanctioned the loan and after executing necessary documents, the said amount was disbursed to the Company on stock in trade and book debts as security. It is further submitted that thereafter on 27.03.1999, an application was submitted for further limit of Rs.50 lacs so as to

make a total loan of Rs.1 Crore and the said Bank sanctioned the same and necessary documents were executed. It is further submitted that again an application came to be submitted on 14.08.1999 for increasing the said limit by further Rs.50 lacs and making it to Rs.1.5 Crore and the Bank sanctioned the same and the limit was increased to Rs.1.5 Crore on execution of necessary documents. That on 30.03.2000, the said limit was increased from Rs.1.5 Crore to Rs.3 Crore on an application made by the Company and the Bank has sanctioned the same on execution of necessary documents and the said limit was upto 31.07.2000 only and the stock in trade was required to be hypothecated with the MMC Bank. It is the case on behalf of the petitioner that though said advance was upto 31.07.2000 only and thereafter, it was coming to an end, the MMC Bank has continued the said facility without there being any application to extend the same and without there being any sanction by the Board of Directors of the MMC Bank. It is submitted that all the monetary transactions were carried out by said Keyurbhai by signing cheques and other vouchers and the petitioner was not taking any

part in the operation of the said account with the MMC Bank. It is further case on behalf of the petitioner that the petitioner was not participating in day to day administration and was giving necessary guidance for manufacture of goods manufactured in the said factory. He was not aware about the transactions with the MMC Bank carried out by Keyurbhai Shah. It is submitted that since there was huge amount over due and due to certain mismanagement and irregularities, operation of the MMC Bank came to a grinding halt, the MMC Bank started filing Suits in the Court of Board of Nominees against the defaulters and as such Lavad Case No. 1000 of 2002 came to be filed against the Company and said Keyurbhai Shah, the petitioner and two other guarantors for the amount of Rs.7,42,005,418. 28ps. which was due and payable as on 31.03.2002 in the Account No.IHP 3846. It is the case on behalf of the petitioner that summons of the said Suit was served upon the petitioner, the petitioner came to know about the financial irregularities committed by said Keyurbhai Pravinchandra Shah and thereafter, the petitioner obtained the copies of accounts from the MMC Bank and

he noticed certain transactions which were not necessary for the business of the Company and transactions have nothing to do with the business of the Company and huge amount were paid by Keyurbhai Shah to various parties through the Bank and it was found that though the facility was upto 30.07.2000 only and which was not extended by submitting necessary application, the MMC Bank has extended the said facility without consent and knowledge of the petitioner and said Keyurbhai has taken the benefit of the same and has made payments which are not for the business of the Company and the said amount comes to Rs.6,86,50,720/-. It is the case on behalf of the petitioner that since father of Keyurbhai Shah, i.e. Pravinchandra Shah was a Director of the MMC Bank and because of his influence, the said transactions were carried out by said Keyurbhai Shah without knowledge of the petitioner and said Keyurbhai Shah has caused loss to the Company and committed criminal breach of trust with the Company and the petitioner to a large extent. It is further alleged that when the petitioner came to know about these facts after filing of the Suit and after he verified accounts of

the Company with the MMC Bank, the petitioner filed a criminal complaint being Criminal Case No. 142 of 2004 in the Court of learned Metropolitan Magistrate, Court No.16, Ahmedabad against said Keyurbhai Pravinchandra Shah who was Managing Director of the Company, his father Pravinchandra Nathalal Shah, who was a Director of the MMC Bank, Shri Devendrabhai Pandya, who was Managing Director of the Bank and Shri Kirenbhai Pandya, who was Branch Manager of Khadia Branch of the MMC Bank for the offences punishable under Sections 406, 408, 409 read with 34 of the IPC and the said complaint was filed on 16.07.2004. the learned Metropolitan Magistrate, Ahmedabad on 16.07.2004 after recording the statement of the petitioner, directed the concerned Police Station to conduct inquiry under Section 202 of the Cr.P.C. and make a report on or before 16.08.2004. That the Police Sub-Inspector of Khadia Police Station conducted a detailed inquiry into the said case, recorded statements of various persons and thereafter, submitted report to the learned Metropolitan Magistrate and after receipt of the said report, the learned Metropolitan Magistrate again

directed further investigation by Kalupur Police Station under Section 202 of the Cr.P.C. and thereafter, Senior Police Inspector, Kalupur Police Station, submitted his report to the Court of learned Metropolitan Magistrate, Ahmedabad and the learned Metropolitan Magistrate, Ahmedabad after considering the said report by order dated 1st September, 2005 has stayed further proceedings under Section 210 of Cr.P.C. on the ground that the MMC Bank has filed a complaint with the CID Crime(State), Gandhinagar which is registered at CID Crime Branch, Gandhinagar Zone Police Station as C.R.No.I-1/2005 and also for the transactions and sanctioning of loan, advance facilities of Rs.6,86,50,720/-. At the outset it is required to be noted that the MMC Bank has filed complaint before the CID Crime (State), being C.R.No.I-1/2005 against the petitioner i.e. Complainant of Criminal Case No. 142 of 2004 and others i.e. Managing Director and Director of the Company as well as against the Managing Director and Chairman of the MMC Bank for the offences punishable under Sections 406, 409, 420, 467, 468, 471 and 120B of the IPC for obtaining advance facility in favour

of the Company of which the petitioner was also the Director. Considering the provisions of Section 210 of the Cr.P.C. and investigation of FIR being C.R.No.I-1/2005 and considering the fact that the investigation is in progress in relation to the offences, the learned Metropolitan Magistrate, has stayed further proceedings of Criminal Case No.142 of 2004 in exercise of powers under Section 210 of the Cr.P.C., by the impugned order. Being aggrieved and dissatisfied with the same, the original complainant of Criminal Case No.142 of 2004 has preferred the present petition under Article 227 of the Constitution of India.

3. Mr.B.B.Naik, learned Advocate appearing on behalf of the petitioner has submitted that the impugned order passed by the learned Metropolitan Magistrate under Section 210 of the Cr.P.C. is absolutely illegal and unlawful and deserves to be quashed and set aside. It is submitted by him that the complaint filed the petitioner being Criminal Case No.142 of 2004 before the learned Metropolitan Magistrate against respondent Nos. 1 to 4 is altogether different from the FIR filed by the MMC

Bank against the Company, the petitioner and respondent Nos.1 to 4. It is submitted that on bare reading of the complaint filed by the petitioner and the FIR filed by the Bank, clearly shows that the offences are different and the facts constituting the offences are altogether different. It is submitted by him that the complaint filed by the petitioner are for the offences committed by respondent Nos. 1 to 4 against the petitioner and the Company and has nothing to do with the Bank. It is submitted that the allegations in the complaint filed by the petitioner are against respondent No.1 – Keyurbhai Pravinchandra Shah with regard to misappropriation of the huge amount of the Company and who was Managing Director of the Company and the complaint is not against the Bank, whereas the complaint lodged on behalf of the Bank being C.R.No.I-1/2005 is filed for misappropriation of the Bank's amount against its Directors, guarantors and other Office bearers of the Bank. It is submitted that basic allegations in both the complaints are altogether different and does not cover under Section 210 of the Cr.P.C. It is submitted that in the facts and circumstances of the

case, the provision of Section 210 of the Cr.P.C. is not applicable and the learned Metropolitan Magistrate has committed an error in passing the impugned order. It is submitted that offences committed by the accused in both the cases, i.e. One instituted otherwise than on a police report, and another instituted with a police report, are altogether different and the facts constituting the offences are also different. It is submitted that the allegations in the complaint filed by the petitioner are constituting offences against the petitioner and the Company and not against the Bank whereas in the FIR lodged on behalf of the Bank, offences are committed against the Bank and not against the petitioner and the Company. Therefore, it is requested to quash and set aside the impugned order passed by the learned Metropolitan Magistrate staying the proceedings of Criminal Case No.142 of 2004 under Section 210 of the Cr.P.C.

4. The petition is opposed by learned Advocate appearing on behalf of the respondents as well as by the State. Learned Advocates appearing on behalf of the respondents as well as the State have submitted

that the allegations in FIR filed by the Bank are for the same amount of Rs.6,86,50,720/- of advance facility by the Bank in favour of the Company and the allegations are also against the petitioner i.e. Complainant of Criminal Case No. 142 of 2004 and even as per the petitioner also the advance were upto 31.07.2000 and thereafter, it was coming to an end, and that the Bank continued the same without their being any application to extend the same and without their being sanction by the Board of Directors, the same was continued illegally as father of Keyurbhai Shah i.e. Managing Director of the Company who was Director of the MMC Bank. It is submitted that whatever is alleged and averred in the criminal case filed by the petitioner with regard to continuance of advance beyond the prescribed time at the instance of Keyurbhai, his father and other Office Bearers of the Bank was without his knowledge, is his defence in the FIR filed by the MMC Bank before the CID Crimes, and therefore, it is submitted that the learned Magistrate has rightly exercised the powers under Section 210 of the Cr.P.C. and has stayed the proceedings of Criminal Case No. 142 of 2004. The

learned Metropolitan Magistrate has not committed an error in staying the proceedings of Criminal Case No. 142 of 2004 till appropriate report is submitted by the Investigating Officer after investigation of FIR being C.R.No.I-1/2005. Therefore, it is requested to dismiss the present petition.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is not in dispute that the petitioner is / was Director of Shree Siddhi Intermediates Private Limited. It is also not in dispute that the petitioner has filed complaint against the respondents for misappropriation of Rs.6,86,50,720/-. It is the contention on behalf of the petitioner that he was only giving advice regarding line of production and was not taking any part in the operating of the Bank and/or in the day to day administration of the Company and the entire transactions i.e. getting advance sanctioned and which is continued even after expiry of the date is without his knowledge, therefore, he has filed aforesaid Criminal Case No. 142 of 2004 against the Managing Director of the Company i.e.Keyurbhai Shah,

his father Pravinchandra Shah, Director of the Bank, Devandra Pandya, Managing Director of the Bank and Kirenbhai Pandya, Branch Manager of the Bank for the offences punishable under Sections 406, 408, 409 read with Section 34 of the IPC alleging inter-alia with regard to mismanagement and misappropriation of the aforesaid amount. In the said case, learned Metropolitan Magistrate, passed an order for inquiry under Section 202 of the Cr.P.C. In the meantime, during the course of said inquiry, the Bank has filed complaint / FIR with the CID, Crimes (State), Gandhinagar which is registered at CID Crime Branch, Gandhinagar Zone Police Station being C.R.No.I-1/2005 against the petitioner, respondents Nos. 1, 2 and 3 herein and others for the offences punishable under sections 406, 409, 420, 467, 468, 471, 120B of the IPC for the transactions of the Company, for the advance and outstanding amount of Rs.6,66,24,733.28 paise alleging inter-alia that the Company has obtained the said advance by creating forged documents by summiting insufficient securities. When the learned Metropolitan Magistrate, came to know during the inquiry with regard to the investigation

by the CID Crimes with regard to the said transactions, the learned Magistrate has stayed the inquiry and proceedings of Criminal case No.142 of 2004 filed by the petitioner in exercise of powers under Section 210 of the Cr.P.C.

Now considering the allegations and averments in the FIR registered with CID Crime as well as the allegations and averments in the complaint filed by the petitioner being Criminal Case no.142 of 2004, allegations in both the complaints are same with regard to sanction of advance facility in favour of the Company and is with regard to same transaction by the Bank with the Company. The allegations are with regard to the same withdrawal and for the amount of Rs.6,66,24,733. 28 ps. However, it is the case on behalf of the petitioner -complainant of Criminal Case No. 142 of 2004 that entire transaction of advance facility etc., in favour of the Company was done by respondent No.1-herein Keyurbhai Shah-Managing Director of the Company and he got the same facility as his father was Director of the Bank and he obtained the

aforesaid facility and/or continued the aforesaid facility beyond the time. It is the contention on behalf of the petitioner that he was not aware of the same and was done against his knowledge and said amount has been misappropriated by Managing Director of the Company. Now considering above, cause of action in both the investigation i.e. Investigation / inquiry in the FIR by the CID Crimes as well as by the concerned I.O. in the aforesaid Criminal Case No. 142 of 2004 whatever is contended on behalf of the petitioner in the complaint can be said to be his defence in the FIR being C.R.No.I-1/2005 filed with the CID Crime i.e. allegations in the complaint that transaction with the Bank getting finance etc. was without his knowledge and he was not aware of the same and that he was not administrating day to day affairs of the Company. Now considering above, when the learned Magistrate has exercised the power under Section 210 of the Cr.P.C. and stayed the proceedings of Criminal Case No. 142 of 2004, it cannot be said that the learned Magistrate has committed any illegality and/or the order passed by the learned trial Court is so perverse which requires

interference of this Court in exercise of powers under Article 227 of the Constitution of India. On the contrary, in the facts and circumstances of the case, more particularly considering same amount of withdrawal, same transaction and same advance facility in favour of the Company, which was part cause of action of both the cases i.e. Criminal Case as well as the FIR registered with the CID Crime, learned Magistrate is justified in exercising powers under Section 210 of the Cr.P.C. and staying the proceedings of Criminal Case No.142 of 2004.

7. It is required to be noted that it is the contention on behalf of the petitioner that advance was upto 31.07.2000 and thereafter it was coming to an end and still the Bank continued the said facility without their being any application to extend the facility and their being without any sanction by the Board of Directors of the Bank and same allegations are in the FIR filed by the Bank. However, the only contention on behalf of the petitioner is that the aforesaid transactions were carried out by said Keyurbhai and the petitioner was not aware of the

same and has not participated in day to day affairs of the Company. As stated above, it can be said to be defence of the petitioner in the complaint being CR No.I-1/2005 registered with the CID Crime. Therefore, the learned Magistrate has rightly exercised the powers under Section 210 of the Cr.P.C. At this stage it is also required to be noted that if the contention of the petitioner is accepted and both the cases are decided separately and/or trial, in that case, there are likely to be two contradictory reports and investigations. During the course of investigation of complaint being C.R.No.I-1/2005 registered with CID Crime, if CID Crime comes to the conclusion that case is made out against the petitioner being Director of the Company for obtaining credit facility and advance illegally, then charge-sheet will be filed against the petitioner. However, in the case filed by the petitioner, if defence of the petitioner is considered that advance were made without his knowledge and/or he was not aware of day to day affairs of the Company, then there are likely to be two different contradictory report as ultimately in both the complaints i.e.

Private as well as FIR filed by the Bank there is only one transaction with regard same loan and same amount. Under the circumstances, the learned Metropolitan Magistrate has rightly exercised the powers under Section 210 of the Cr.P.C.

8. By the impugned order no prejudice is likely to be caused to the petitioner. After investigation of FIR registered at CID Crimes, the Investigating Officer of the CID Crimes will submit the report before the learned Magistrate as required under Sub-section (2) of Section 210 of the Cr.P.C. and thereafter, the learned Magistrate will proceed further as per provisions of Section 210 of the Cr.P.C. more particularly considering Sub-section (2) and Sub-section(3) of Section 210 of the Cr.P.C. At this stage, Mr. M.R.Mengdey, learned A.P.P. has submitted that investigation would be completed by the Investigating Officer of the complaint being C.R.No.I-1/2005 filed with the CID Crime and will submit the report as early as possible to the concerned learned Magistrate immediately. Considering the facts and circumstances of the case,

the order dated 01.09.2005 passed by the learned Metropolitan Magistrate in Criminal Case No.142 of 2004 staying the proceedings of the said case is not required to be interfered with by this Court. Considering the fact that complaint being C.R.No.I-1/2005 is of January 2005, the Investigating Officer of said complaint i.e. Investigating Officer of CID Crimes is directed to complete the investigation and submit appropriate report before the learned Metropolitan Magistrate, Court No.16, Ahmedabad within a period of 4(four) months from today, and thereafter, the learned Magistrate will proceed further in accordance with Section 210 of the Cr.P.C.

9. For the reasons stated above and with above direction, present petition is dismissed. Notice discharged. Office is directed to send Writ of this order to the Investigating Officer, CID Crime (State), Gandhinagar Zone Police Station, immediately. Learned Additional Public Prosecutor to communicate this order to the concerned Investigating Officer to carry out aforesaid direction as stated above.

[M.R.Shah, J.]

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